

# GIBSON DUNN

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January 14, 2013

*Via Electronic Mail and Hand Delivery*

The Honorable Robert E. Payne  
United States District Judge  
Spottswood W. Robinson III and Robert R. Merhige, Jr.,  
Federal Courthouse  
701 East Broad Street  
Richmond, Virginia 23219

Re: *ePlus, Inc. v. Lawson Software, Inc.*, Civ. No. 3:09cv620

Dear Judge Payne:

I write on behalf of Lawson Software, Inc. to respond to the Court's request during the January 11, 2013 telephonic conference that the parties list the four dates proposed by the Court for a contempt hearing in their respective order of preference. Trial calendar conflicts for Lawson's two expert witnesses and counsel make all four dates inconvenient for Lawson. Nevertheless, to respond directly to the Court's inquiry, Lawson's order of preference is as follows:

- (1) April 1, 2013
- (2) March 18, 2013
- (3) March 11, 2013
- (4) February 25, 2013

The proposed trial date of February 25 presents numerous problems for Lawson, including the unavailability of its technical expert witness, Benjamin Goldberg; its damages expert witness, Jon Putnam; and an important company witness, Dale Christopherson, who will testify about the redesigned RQC component and the manner in which that redesign limits customers from performing certain functions that previously were available to customers who licensed Configurations 3 and 5. Mr. Krevitt is currently scheduled to begin trial on March 4, 2013, making March 11 an equally bad option for Lawson.

We are aware that if the contempt proceeding is scheduled for the week of April 1, ePlus has requested that it commence on Wednesday, April 3, 2013. Lawson has no objection to beginning the hearing on April 3<sup>rd</sup>, 4<sup>th</sup> or 5<sup>th</sup>, but would request that the Court permit Dr. Putnam to testify, if necessary, on Monday, April 8, 2013. Dr. Putnam is

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scheduled to testify at a trial not involving these parties or counsel during the week of April 1<sup>st</sup>, both during the case-in-chief and on rebuttal. Because Dr. Putnam (Lawson's last witness) may not need to testify at all in this case (if, for instance, the Court determines that Lawson's RQC redesign renders its product more than colorably different from the enjoined Configurations 3 and 5), Lawson does not believe that Dr. Putnam's availability issues should prevent the contempt proceeding from beginning during the week of April 1, 2013.

As indicated in Lawson's Statements of Position, and during the January 11 telephonic conference, it is Lawson's position that the Court needs to determine "what changes are required to the terms of the injunction" consistent with the Federal Circuit's November 21, 2012 decision, before commencing any contempt proceeding.

Respectfully submitted,



Daniel J. Thomasch

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cc: All counsel of Record (*via email*)

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